

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

MELISSA STOCKTON,)	
)	
Plaintiff,)	
)	
v.)	Case No. 06-CV-357- GKF-PJC
)	
HOUSECALLS HOME HEALTH)	
SERVICES, INC., ALLCARE HEALTH)	
SYSTEMS, INC. and DEREK APPLE, an)	
Individual,)	
)	
Defendants.)	

**DEFENDANTS' MOTION FOR LEAVE TO FILE A SUR-REPLY BRIEF IN
OPPOSITION TO PLAINTIFF'S OBJECTIONS TO ORDER BY MAGISTRATE
JUDGE UNDER RULE 72**

Defendants, Housecalls Home Health Services, Inc., Allcare Health Systems, Inc., and Derek Apple ("Defendants"), hereby request leave, pursuant to Local Rule 7.1(h), to file a Sur-Reply Brief in Opposition to Plaintiff's Objections to Order by Magistrate Judge Under Rule 72 [Docs 102 and 116]. In support of this Motion, Defendants state as follows:

1. On June 15, 2007, Magistrate Judge Cleary entered an Order in this case denying Plaintiff's request to depose Attorney Teresa Burkett [Doc 101].
2. On June 25, 2007, Plaintiff appealed such Order [Doc. 102], and on July 10, 2007, Plaintiff filed an Opposed Motion to Supplement Plaintiff's Objections to Order by Magistrate Judge [Doc 111]. Defendants' response was due on July 30, 2007; however, the Court ruled on Plaintiff's Motion prior to the Defendants filing a response.
3. On July 10, 2007, Defendants filed their Response to Plaintiff's appeal of the Order entered by Magistrate Judge Cleary [Doc 112].
4. On July 24, 2007, Plaintiff filed her Reply in support of her objections to

Magistrate Judge Cleary's Order [Doc 116].

5. On July 26, 2007, Plaintiff filed her Third Motion to Compel Discovery [Doc 123].

6. On July 30, 2007, the Court entered an Order denying [Doc 102] Appeal of Magistrate Judge's Order and [Doc 111] Plaintiff's Motion to Supplement. The Court recommitted the issue of whether no other means exist to obtain the information than to depose Attorney Burkett to the Magistrate Judge based on Plaintiff's representation that she has relevant new evidence.

7. Rule 72, Fed. R. Civ. Proc., governs objections to Magistrate Judge's Orders. Rule 72 does not appear to contain a provision for a reply. However, Plaintiff filed her Reply on July 24, 2007 [Doc 116] prior to the Court's determination of whether Plaintiff would be allowed to supplement her objections. Defendants believe that Plaintiff's Reply was procedurally improper and an attempt by Plaintiff to provide new evidence to the Court without a ruling on her Motion to Supplement, which was ultimately denied by the Court.

8. Plaintiff's Reply provided new evidence to the Court. To the extent that Plaintiff's Reply was procedurally proper and the Court is willing to consider the new evidence, Defendants request that they be allowed to file a Sur-Reply Brief within five (5) business days of the Court's ruling on this Motion.

9. Counsel for Defendants has contacted counsel for Plaintiff, and Plaintiff's counsel objects to this motion.

For the foregoing reasons, Defendants respectfully request leave to file a Sur-Reply Brief within five (5) business days of the Court's ruling on this Motion.

Respectfully Submitted,

s/Reuben Davis

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CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of August, 2007, I electronically transmitted the attached document to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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s/Reuben Davis